

## **Unionization Made Easy** *Courtesy of the National Labor Relations Board*

In his 2011 State of the Union address, President Obama said, “we measure progress by...the prospects of a small business owner who dreams of turning a good idea into a thriving enterprise.”<sup>1</sup> Yet the current National Labor Relations Board (NLRB) has shown its activist nature by making decisions that clearly display union favoritism and create uncertainty for American businesses.

### **Obama’s NLRB is Chipping Away at Secret Ballot Elections:**

*Lamons Gasket Company* is a closely watched NLRB case because it is key in the fight against forced unionization.<sup>2</sup> The company voluntarily entered into an agreement with the United Steelworkers (USW) to recognize it as the bargaining representative for Lamons Gasket employees. Employees objected to the USW’s representation and filed a petition with the NLRB requesting a decertification election. Fearful of losing on the merits, the USW petitioned the NLRB to reexamine the 2007 *Dana Corporation* decision, which laid out procedures, including a 45-day window for workers to hold a secret ballot election to decertify unions that were forced upon them through employer-union agreements.<sup>3</sup>

The NLRB agreed to reexamine the *Dana* decision and prevented Lamons Gasket employees from holding a decertification election.<sup>4</sup> Fourteen briefs were submitted, 10 of which supported the *Dana* decision. However, there is widespread concern that the NLRB will nonetheless overturn *Dana*, which would severely restrict workers’ ability to decertify a union by secret ballot.

### **Obama’s NLRB is Paving the Way for “Mini-Unions”:**

In the case of *Specialty Healthcare and Rehabilitation Center of Mobile*, the NLRB’s actions could open the door for a small segment of a company’s workers—a handful at a time—to collectively bargain, essentially forming “mini-unions.”<sup>5</sup> The case revolves around the USW’s attempt to organize certified nursing assistants, a small group that Specialty Healthcare considered part of a larger bargaining unit.

The USW filed a complaint, but the NLRB opted for a broader inquiry into what constitutes a bargaining unit, with a focus on mini-unions.<sup>6</sup> Allowing small groups to be bargaining units would have disastrous consequences for American businesses:

- eliminating flexibility in cross-training or reassigning employees throughout the company;
- increasing the administrative burden with continuous contract negotiations with multiple bargaining units;
- allowing labor organizations to target smaller groups that are more likely to unionize;
- giving multiple mini-unions the power to disrupt operations through never-ending strike activity, even if the majority of workers are not union members.<sup>7</sup>

Despite the evidence that mini-unions will harm businesses, particularly small businesses, and discourage companies from creating new jobs, it is feared that the NLRB will use this case to further advance its activist agenda by creating a new standard for determining bargaining units in all industries.

### **Obama's NLRB is Giving More Rights to Unions than to Property Owners and Employers:**

Two other cases clearly show the NLRB's bias toward unionization efforts. In the case of *New York, New York Hotel & Casino*, employees of a casino's food services contractor launched an organizing effort, passing out handbills in front of the restaurants and on the sidewalks outside the casino.<sup>8</sup> The casino had police remove the protestors, who then filed an unfair labor practice complaint.

In March 2011, the NLRB issued a 3-1 decision establishing an expanded standard for access.<sup>9</sup> The decision allows property owners to restrict access only when activity significantly interferes with the use of the property or for a justifiable, legitimate business reason. This virtually eliminates all property owner and employer access control, while establishing new standards of access for the pending *Roundy's Inc.* case.

In the case of Roundy's, which operates grocery stores in Wisconsin, the Milwaukee Building and Construction Trades Council (MBCTC) decided to distribute flyers urging customers to boycott the company for using non-union contractors to build and renovate its stores.<sup>10</sup> Roundy's had the protestors removed, prompting the MBCTC to file unfair labor practice charges.

The NLRB's administrative law judge ruled that because Roundy's provided access to other groups, such as the Girl Scouts and an environmentalist group, they were discriminating against the union. The ruling was based upon the NLRB's 3-2 decision in the *Sandusky Mall Co.* case, where the majority opinion claimed that allowing some groups access for solicitations while prohibiting the union from handbilling was discrimination. The two dissenting NLRB members said the union's protests were different from other solicitations and that the mall would have banned any boycott activity regardless of the group involved. The U.S. Court of Appeals agreed with the NLRB dissenting opinions and denied enforcement of the NLRB's *Sandusky Mall* decision. Undeterred, the NLRB is using the Roundy's case as an opportunity to seemingly disregard the appellate court's decision in *Sandusky Mall* and revisit the case in order to expand access for union activists.<sup>11</sup>

Whether it is through limiting secret ballot elections, allowing of mini-unions, or granting unprecedented property access to union organizers, the NLRB is making drastic changes that favor unions, threaten job creation, and ignore the rights of employees and business owners.

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<sup>1</sup> Remarks by the President in the State of the Union Address, January 25, 2011, <http://goo.gl/hU5ht>.

<sup>2</sup> *Lamons Gasket Company*, NLRB Case 16-RD-1597, <http://1.usa.gov/fcTGGQ>.

<sup>3</sup> *Dana Corporation*, NLRB Case 8-RD-1976, <http://1.usa.gov/hCjM16>.

<sup>4</sup> NLRB Notice and Invitation to File Briefs on Case 16-RD-1597, <http://1.usa.gov/dXBHgQ>.

<sup>5</sup> *Specialty Healthcare and Rehabilitation Center of Mobile*, NLRB Case 15-RC-008773, <http://1.usa.gov/ejgqjL>.

<sup>6</sup> NLRB Notice and Invitation to File Briefs on Case 15-RC-008773, <http://goo.gl/QQx2b>; Decision on Review and Order Remanding on *Park Manor Care Center, Inc.*, NLRB Case 18-RC-14810, <http://1.usa.gov/gKIqCU>.

<sup>7</sup> Amicus brief by the Coalition for a Democratic Workplace on NLRB Case 15-RC-008773, <http://goo.gl/jdr8g>; Amicus brief by Senators Michael Enzi, Orrin Hatch, and Johnny Isakson on NLRB Case 15-RC-008773, <http://goo.gl/czJrL>.

<sup>8</sup> *New York, New York Hotel & Casino*, NLRB Case 28-CA-14519, <http://goo.gl/rs0xl>.

<sup>9</sup> Decision and Order in *New York, New York Hotel & Casino*, NLRB Case 28-CA-14519, <http://goo.gl/4SmzE>.

<sup>10</sup> *Roundy's Inc.*, NLRB Case 30-CA-017185, <http://goo.gl/Se9XX>.

<sup>11</sup> NLRB Notice and Invitation to File Briefs on Case 30-CA-017185, <http://goo.gl/E3LbC>.